134 Box 53 - JGR/Supreme Court (7) – Roberts, John G.: Files
SERIES I: Subject File

THE WHITE HOUSE

WASHINGTON

September 21, 1984

MEMORANDUM FOR BEN ELLIOTT
DEPUTY ASSISTANT TO THE PRESIDENT
DIRECTOR, PRESIDENTIAL SPEECHWRITING

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Remarks for Supreme Court Reception

The following points should be included in the President's remarks to be delivered at the reception for the Justices of the Supreme Court:

° The gathering of the nine Justices at the White House on the occasion of the commencement of the October Term is a historic tradition that has been revived by President Reagan. Similar events took place in 1982 and 1983.

° The Justices do a great deal of court work during the summer months, reviewing the steady flow of certiorari petitions and determining which cases to hear in the coming year.

° This week (September 17) marked the 197th anniversary of the drafting of the Constitution. The Chief Justice is particularly interested in preparations for commemorating the Bicentennial of the Constitution, and it would be fitting to mention the imminence of the Bicentennial.

° The Supreme Court, of course, plays a critical role as the ultimate arbiter of the Constitution. The vitality of the Court as an institution is one of the reasons that we are in a position to prepare to celebrate 200 years of liberty secured by the Constitution.

° The beginning of a new Court Term is a routine event in our history, but consider how rare this institution is in the world today and the history of mankind. The Court considers some of the most divisive issues we face. Those disputes are settled not by bombs and guns, but by reasoned argument and the calm deliberations of the Justices in their chambers, guided by the wisdom the Framers wrote into the Constitution. The "fireworks" are limited to an occasional lively exchange during argument or between a majority opinion and the occasional dissent.

° The fact that the Court can discharge its awesome responsibility is a mark of respect Americans have for the rule of law.

° The President should conclude by welcoming the Justices back to Washington, and wishing them well as they begin another term of interpreting the Constitution and laws, "those wise restraints that make men free."

FFF:JGR:aea 9/21/84
cc: FFFielding/JGRoberts/Subj/Chron

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FFF:JGR:aea 9/21/84
cc: FFFielding/JGRoberts/Subj/Chron

(Rohrabacher)
September 21, 1984
5:30 p.m.

PRESIDENTIAL REMARKS: RECEPTION FOR SUPREME COURT JUSTICES
TUESDAY, SEPTEMBER 25, 1984

Welcome again to the White House and for some of you, welcome back to Washington. I've always thought that just below the surface of most traditions is some very practical reasoning. Well, 2 years ago, after much thought and consideration, we decided to revive this tradition of gathering the Justices of the Court at the White House at the commencement of the October term. I hope you agree with me that occasions such as this, add to our mutal respect and depth of appreciation for the constitutional roles we are playing.

This brings to mind a meeting, detailed in Schlesinger's treatise, "The Age of Roosevelt," when F.D.R. visited Justice Oliver Wendell Holmes on the occasion of his 92nd birthday. It was in the middle of the banking crisis and President Roosevelt told the aging Justice, "We face grave times," and asked for his advice.

Holmes, a Civil War veteran, shot back without hesitation, "Form your ranks and fight!" Roosevelt had great respect for Justice Holmes, then a historical figure. When he left, Holmes is quoted as affectionately describing President Roosevelt as, "A second class intellect, but a first class temperament."

Well, I hope we can develop a bit more multi-dimensional respect between us. We must never lose sight of the fact that we are shaping the history of the United States.

(Rohrabacher)
September 21, 1984
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Well, I hope we can develop a bit more multi-dimensional respect between us. We must never lose sight of the fact that we are shaping the history of the United States.

When one observes the chaos and repression in so many other societies, we have much for which to be grateful here.

I am pleased I've had this opportunity to be with you as your new term begins. I wish you energy and wisdom in your task of interpreting the Constitution and the laws of our land, "those wise restraints that make men free." Thank you and God bless you.

THE WHITE HOUSE

WASHINGTON

June 21, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Senator Helms' Bill - a Legislative Restriction on the Appellate Power of U.S. Supreme Court

Senator Helms has advised Pat Buchanan that he is considering appending a bill restricting the appellate jurisdiction of the United States Supreme Court to the Small Business Administration authorization bill. Buchanan has written a memorandum to Friedersdorf, advising him that "it is a constitutional procedure," and asking if the Administration can support or at least not oppose it. Friedersdorf has asked your views.

We do not have a copy of what Helms proposes, so cannot give a definitive legal opinion. Assuming that what is at issue is one of Helms' court-stripping bills, however, we cannot support it, unless the Administration dramatically changes its position. In 1982, after exhaustive internal deliberations, Attorney General Smith advised Senator Thurmond that the Administration considers bills divesting the Supreme Court of appellate jurisdiction in constitutional cases to be unconstitutional. (You may recall that I disagreed with that conclusion on legal grounds, but agreed that the court-stripping bills were bad policy.)

The attached memorandum for Friedersdorf notes that the Administration has already taken a position on such bills and that the position is contrary to Buchanan's representation that they are constitutional.

THE WHITE HOUSE

WASHINGTON

June 21, 1985

MEMORANDUM FOR MAX L. FRIEDERSDORF
ASSISTANT TO THE PRESIDENT AND
LEGISLATIVE STRATEGY COORDINATOR

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Senator Helms' Bill - a Legislative Restriction on the Appellate Power of U.S. Supreme Court

You have asked if we can support a rider Senator Helms proposes to append to the Small Business Administration authorization bill, restricting Supreme Court appellate jurisdiction. I have not seen a copy of the bill and so cannot give a definitive legal opinion. I assume, however, that the bill is one of the standard court-stripping proposals. The Administration is on record as opposing such bills, as they apply to the Supreme Court, as unconstitutional. In 1982 Attorney General Smith announced the Administration's view in a letter to Senator Thurmond, concluding that Congress may not constitutionally divest the Supreme Court of appellate jurisdiction in constitutional cases.

The question of the constitutionality of such proposals has sharply divided legal commentators, and many agree with Pat and Senator Ervin that they are constitutional. The Administration, however, has formally taken the other view. Assuming Senator Helms' rider is such a court-stripping bill, we accordingly not only could not support it, but would be compelled to oppose it, unless we were willing to reverse the Administration's position.

FFF/JGR:kl
FFFielding
JGRoberts
Subj.
Chron.

THE WHITE HOUSE

WASHINGTON

June 21, 1985

MEMORANDUM FOR MAX L. FRIEDERSDORF
ASSISTANT TO THE PRESIDENT AND
LEGISLATIVE STRATEGY COORDINATOR

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Senator Helms' Bill - a Legislative Restriction on the Appellate Power of U.S. Supreme Court

You have asked if we can support a rider Senator Helms proposes to append to the Small Business Administration authorization bill, restricting Supreme Court appellate jurisdiction. I have not seen a copy of the bill and so cannot give a definitive legal opinion. I assume, however, that the bill is one of the standard court-stripping proposals. The Administration is on record as opposing such bills, as they apply to the Supreme Court, as unconstitutional. In 1982 Attorney General Smith announced the Administration's view in a letter to Senator Thurmond, concluding that Congress may not constitutionally divest the Supreme Court of appellate jurisdiction in constitutional cases.

The question of the constitutionality of such proposals has sharply divided legal commentators, and many agree with Pat and Senator Ervin that they are constitutional. The Administration, however, has formally taken the other view. Assuming Senator Helms' rider is such a court-stripping bill, we accordingly not only could not support it, but would be compelled to oppose it.

FFF/JGR:kl
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JGRoberts
Subj.
Chron.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Max Friedersdorf

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Senator Helms's bill - a legislative restriction on the appellate power of U.S. Supreme Court

ROUTE TO: **ACTION** **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Code	Completion Date YY/MM/DD
WHOLL	ORIGINATOR	85106121			1 1
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	Referral Note:				
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		1 1			1 1
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THE WHITE HOUSE
WASHINGTON

DATE: 6-20-85

TO: Fred Fielding

FROM: Mark F.

SUBJECT:

THE ATTACHED IS FOR YOUR:

Information _____

Action ✓

Letter response _____

File _____

OTHER Fred, can we support this Helms' amendment?

_____

Invitation:

Accept _____ Decline _____

THE WHITE HOUSE

WASHINGTON

June 19, 1985

MEMORANDUM FOR MAX L. FRIEDERSDORF

FROM: PAT BUCHANAN PB

Talked with the senior Senator from North Carolina. He has in mind appending to the SBA authorization bill, to be introduced by Weicker, an amendment, which is a legislative restriction on the appellate power of the U.S. Supreme Court. It is a constitutional procedure, approved by among others, Senator Sam Ervin. (It would be challenged, however.) What the Senator asks of us is that when the battle is joined, he not turn around and see a large yellow legal tablet, with "Administration Opposed," scribbled on it. Have told him I would do the best I could. Any guidance other that B's graphic epithet of disinterest given me the other day?

Supreme Court Opns

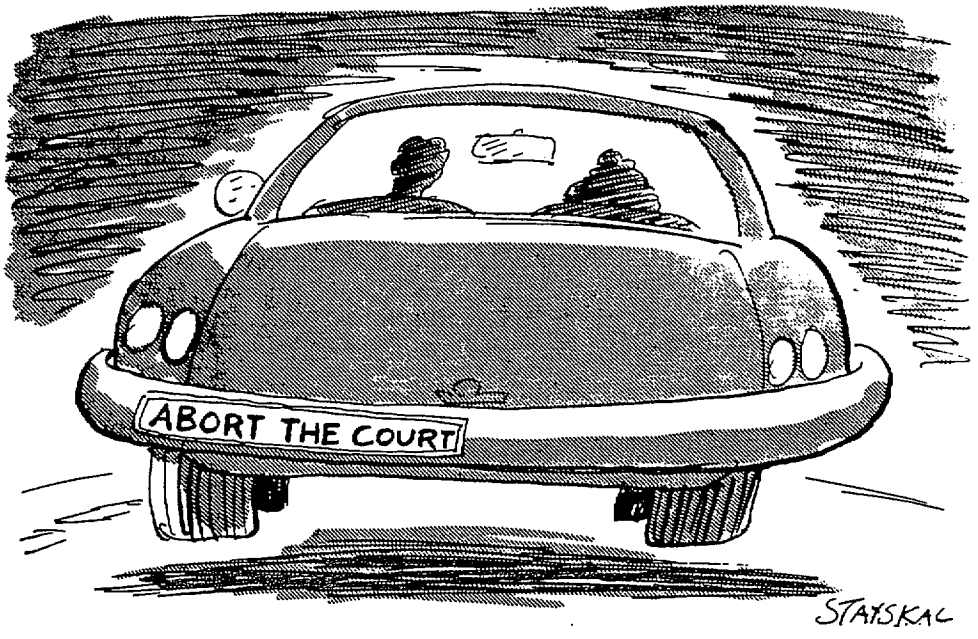
Los Angeles Times

DATE: 7-24-85

PAGE: Part II p. 5

Single Fixed Terms for the Supreme Court?

By ALAIN L. SANDERS



Since 1981, when Potter Stewart stepped down from the U.S. Supreme Court and President Reagan named Sandra Day O'Connor to replace him, the court has become the focus of an unseemly waiting game. Major political and ideological players have begun to wonder how many more slots Reagan may get to fill. The present panel has matured into the second-oldest one in history, and, for the first time ever, five of the incumbents—a majority—are 76 or over.

The New Right can hardly wait for a Reagan chance to pack the court, while liberals anxiously wait, fingers crossed, for the end of the President's term.

The Supreme Court deserves much better than this. It declares the law of the land, and its rulings stand as precedents for generations. The court ought to remain beyond politics at all times. No one should be planning or fearing the development of the nation's law because of the chance of personnel changes. The current concern over succession suggests that there may be merit in seriously rethinking the way in which the justices are appointed.

The Constitution provides that Supreme Court justices are named for life. This indefinite term has meant that historically the length of service of individual justices has varied greatly—determined principally by each person's age, stamina, ambition and simple chance. Some, such as John Marshall and William O. Douglas, have stayed on the bench more than 30 years. Others, such as Benjamin N. Cardozo, have served less than 10 years.

This haphazard pattern has offered some Presidents vast opportunities to shape the court, others none. Franklin D. Roosevelt appointed nine justices. William Howard Taft, a one-term President, named six. Jimmy Carter, who also served one term, named no one.

The record shows that, on average, members of the court have served about 16 years each. A new system could be created that would permit every President to name a numerically fair share of justices and allow every nominee an opportunity to serve a historically fair share of time.

The proposal, which would require a constitutional amendment, is not complicated. Members of the court would still be nominated by the President and confirmed by the Senate. But each of the nine justices would be appointed for a fixed, non-renewable term of 16 years, and the start of the terms would be staggered by two years. The plan would open up two slots during every presidential term—except for every fourth term, when three vacancies would occur. (If a member failed to complete a term, another justice could be appointed for the period remaining.)

Under this new scheme, judicial independence would be protected by the length and non-renewability of the term. Sixteen years are ample time for the full development and unhindered assertion of a member's judicial philosophy. The bar to reappointment would remove personal ambition from an incumbent's judicial thinking.

Of course, politics can never be completely eliminated from the judicial mind, and conceivably a justice might seek another government post following the end of a judicial term. Nothing stops the present life-appointed justices from doing this now. They can step down at any time to pursue another political job, and over the years several have done so without tarnishing the principle of judicial independence. John Jay left the bench to become governor of New York, Charles Evans Hughes to run for President and Arthur J. Goldberg to become U.N. ambassador.

The regular occurrence of vacancies under the proposed plan would prevent a President from loading the court for an indefinite span of time. Just as important, it would give every presidential electoral coalition the chance to have its Chief Executive pick some justices. Thus, over time, the court would more likely be made up of people who reflect the nation's major political shifts.

Because the proposal's 16-year term is based on a historical average, this new scheme would not increase the turnover rate. As has been roughly the case in the past, 28 justices would serve during every 50-year cycle. However, at all times the court would have the benefit of a balanced composition: senior justices with experience and junior justices with new ideas. The term also would be long enough to channel the President into choosing reasonably youthful people. But it would be short enough to enable the President to select mature and accomplished nominees.

A change in the way Supreme Court justices are named would not mark the first time that the country has adopted a new method to pick its top officials. At the beginning of the 19th Century the 12th Amendment altered the way the President and the vice president are elected, and in the early years of the 20th Century the 17th Amendment changed the way senators are chosen. Given the politicking that now surrounds the succession of justices, the eve of the 21st Century could be the appropriate time to consider a different procedure to select our highest judges.

Alain Sanders is a lawyer and a reporter-researcher on legal affairs for Time magazine in New York.

THE WHITE HOUSE

WASHINGTON

August 28, 1985

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Report on S. 833, a Bill to Provide Greater Discretion to the Supreme Court in the Selection of Cases for Review

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective.

ID # [illegible] CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: [illegible]

☐ MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: [illegible]

ROUTE TO: Office/Agency (Staff Name)	ACTION Action Code	Tracking Date YY/MM/DD	DISPOSITION Type of Response	Code	Completion Date YY/MM/DD
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5/81

The purpose of this bill has been endorsed by all of the Justices of the Supreme Court, 5/ the Judicial Conference, 6/ the American Bar Association, 7/ study groups concerned with the problems of the federal courts, 8/ and the leading legal scholars in the areas of federal jurisdiction and judicial administration. 9/ The Department of Justice has supported this legislation since its initial introduction in the 95th Congress. 10/ Indeed, every

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5/ H.R. Rep. No. 986, 98th Cong., 2d Sess. 27 (1984) (letter signed by all the Justices).

6/ Court Improvements Act of 1983: Hearings on S. 645 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. 205-13 (1983).

7/ Id. at 118-19.

8/ Committee on Revision of the Federal Judicial System, The Needs of the Federal Courts 11-13 (1977) (report of Justice Department committee headed by Solicitor General Robert H. Bork); Report of the Federal Judicial Center Study Group on the Caseload of the Supreme Court 47 (1972) (the "Freund Commission" report). These reports are reproduced in State of the Judiciary and Access to Justice: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 95th Cong., 1st Sess. 521-43, 620-87 (1977).

9/ See generally H.R. Rep. No. 986, 98th Cong., 2d Sess. 2-3 & n.5 (1984).

10/ See Letter of Assistant Attorney General Robert A. McConnell to Honorable Strom Thurmond Concerning S. 645, at 2 (Mar. 26, 1984); Court Improvements Act of 1983: Hearings on S. 645 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. 15-16 (1983); Supreme Court Workload: Hearings on H.R. 1968 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 98th Cong., 1st Sess. 228-29 (1983); Mandatory Appellate Jurisdiction of the Supreme Court -- Abolition of Civil Priorities -- Jurors Rights: Hearing on H.R. 2406, H.R. 4395, and H.R. 4396 Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 97th Cong., 1st Sess. 110-11, 113-21, 266-70 (1982); Court Reform Legislation: Hearing on S. 1529, S. 1531, and S. 1532 Before the Subcomm. on Courts of the Senate Comm. on the Judiciary, 97th Cong., 1st Sess. 125-30 (1981); Supreme Court Jurisdiction Act of 1978: Hearings on S. 3100 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 95th Cong., (Footnote Continued)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

August 26, 1985

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO:

Administrative Office of the U.S. Courts

SUBJECT: Department of Justice draft report on S. 833, a bill to provide greater discretion to the Supreme Court in the selection of cases for review.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 9/5/85.
(NOTE -- Similar legislation was introduced in the 98th Congress as H.R. 5644 and as Title I of S. 645.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Fred Fielding
John Cooney
Karen Wilson

U.S Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington D.C 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 833, a bill to improve the administration of justice by providing greater discretion to the Supreme Court in selecting the cases it will review. The Department of Justice strongly supports this legislation and urges its immediate enactment.

The bill would generally eliminate the Supreme Court's remaining mandatory appellate jurisdiction in favor of discretionary review by certiorari, except for direct appeals from three-judge district courts. This proposal originated in the 95th Congress as S. 3100, which was favorably reported by the Senate Judiciary Committee in 1978. 1/ It was reintroduced in the 96th Congress as S. 450, 2/ which was passed by the full Senate in April of 1979. In the 98th Congress, it was favorably reported by the Senate Judiciary Subcommittee on Courts as Title I of S. 645.

In the House of Representatives, the same proposal has been introduced repeatedly over the past several years in a number of bills. These include H.R. 5644, which was passed by the House of Representatives without opposition in the 98th Congress, 3/ and H.R. 6872 (Title I), which was passed by the House of Representatives without opposition in the 97th Congress. 4/

1/ See S. Rep. No. 985, 95th Cong., 2d Sess. (1978).

2/ See generally S. Rep. No. 35, 96th Cong., 1st Sess. (1979).

3/ See 130 Cong. Rec. H9287-89 (daily ed. Sept. 11, 1984); H.R. Rep. No. 986, 98th Cong., 2d Sess. (1984).

4/ See 128 Cong. Rec. H7269-75 (daily ed. Sept. 20, 1982); H.R. Rep. No. 824, 97th Cong., 2d Sess. (1982).

individual and organization that has publicly commented on this proposal has done so favorably. 11/

The failure of Congress to enact this beneficial reform -- notwithstanding the consistent support it has received from the Executive and Judicial branches, and the general support evidenced over time in both Houses of Congress -- is a source of disappointment to the Department of Justice and to others concerned with the effective administration of justice. We earnestly recommend and urge that this long overdue measure be enacted without any further delay.

The Office of Management and Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General

(Footnote Continued)
2d Sess. 2-6 (1978).

The Department had earlier recommended the general elimination of mandatory appeals to the Supreme Court in the report of the "Bork Committee." See note 8 supra.

11/ See the hearings cited in note 10 supra.

Alternatives for the 1980's — An Occasional Paper

THE SENATE, THE COURTS AND THE CONSTITUTION

A Debate

Michael W. McConnell
Laurence H. Tribe

with
Paul D. Gewirtz
Moderator

Center for National Policy

ID # 381695 CU

F601

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
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Date Correspondence Received (YY/MM/DD) 1 1

DRW/gyi

Name of Correspondent: Richard K. Willard

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Nine Deadlines Concerning appeal, rehearing en banc, Certiorari, and amicus Determinations

ROUTE TO: Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CW Holland	ORIGINATOR	86102105			1 1
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CWAT 18	I	86102411	PY	S	86102120
	Referral Note:				
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	Referral Note:				
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U.S. Department of Justice

Civil Division

381695

Office of the Assistant Attorney General *Washington, D.C. 20530*

Honorable Fred F. Fielding
Counsel to the President
The White Houses
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Time deadlines concerning appeal, rehearing en banc, certiorari, and amicus determinations

Dear Mr. Fielding:

You recently received a letter from the Solicitor General stressing that he was establishing schedules of time deadlines for the Divisions of the Department of Justice in order that his office could properly and timely perform its functions. I want to notify you of those deadlines insofar as they relate to Civil Division cases and reiterate the Solicitor General's request that you impress upon your staff the urgency of this matter. I also wish to express our determination to adhere to these schedules.

1. Appeals to the court of appeals from adverse district court decisions.

The Solicitor General has requested the Civil Division to make every effort to submit as early as possible its recommendation on whether an adverse district court judgment will be appealed, and in any event to submit its recommendation prior to the time for filing a notice of appeal.

Timely receipt of your office's recommendation is crucial to our efforts to achieve this goal. In order that you have the maximum time available to make your recommendations, U.S. Attorneys and Civil Division attorneys are under standing

instructions to notify your office immediately of any adverse decision where you are a party. To achieve maximum effect, your recommendation should be received at the initial stage of the recommendation process. I therefore request that, unless you are notified otherwise, you submit your recommendation to the Civil Division within 30 days following the final judgment.

While you will ordinarily receive a letter from the Division soliciting your views, you should not wait for our letter but immediately prepare your recommendation following receipt of the adverse decision. Civil Division attorneys are under instructions to wait for your recommendation only until the 30th day before formulating the Division's recommendation; therefore, timely submission of your recommendation is your guarantee that your views will receive consideration by the Division. If we do not hear from you by the 30th day, we will assume that your office has no interest in an appeal.

2. Rehearing en banc and Supreme Court review of adverse court of appeals decisions.

a. Rehearing en banc.

The question of whether to seek rehearing en banc following an adverse court of appeals decision presents especially critical timing problems. Under the Federal Rules of Appellate Procedure, a petition for rehearing must be filed within 14 days of an adverse decision. In most circuits this time can be extended but only by one short extension.

If your office believes that rehearing en banc is in order, it is therefore essential that, unless your are notified of a different date, the Division receive your written recommendation within 14 days after the adverse decision.1/ If we do not hear from you within that period, our attorneys will assume that your office does not regard rehearing en banc as a viable option. Civil Division attorneys will make every effort to assure that you are promptly notified of adverse court of appeals decisions.

1/ In addition, so that we may seek an appropriate extension, it is critical that within seven days of the adverse decision your office orally notify the attorney handling the case that it is likely your office will wish to recommend in favor of petitioning for en banc review.

b. Supreme Court review.

The government has 90 days following an adverse court of appeals decision or denial of a timely petition for rehearing in which to seek Supreme Court review in civil cases. The Solicitor General has requested the Civil Division to submit its recommendation concerning Supreme Court review by the 60th day.

Again, to assure maximimum effectiveness of your recommendation, it should be received at the initial stage of the process, i.e., within 30 days following the adverse decision or denial of the petition. Civil Division attorneys are under instructions to wait only until that time before formulating the Division's recommendation concerning Supreme Court review. If we do not hear from you by that time, we will operate on the assumption that your office has no interest in Supreme Court review.

3. Amicus participation.

The government frequently will participate as amicus in the court of appeals or the Supreme Court. The Solicitor General authorizes participation as amicus. Often, the Department of Justice will spot a non-government case and request your views as to whether the government should participate. In that event, you will be notified in writing as to the time in which your views should be received. If you wish to have input into the decision-making process, your views must be received within the specified time period.

In other cases, your office may initiate a request for amicus participation. Because the Department of Justice ordinarily will have had no prior involvement in these cases, it takes a significant period of time for the Civil Division attorneys and the Solicitor General's staff to study the documents in the case, make their recommendations, and prepare any necessary brief. The Solicitor General and I request your help in this process. If the Department of Justice does not have adequate time on amicus requests, we simply cannot make intelligent decisions which are in the best interest of the government. Accordingly, the Solicitor General and I have adopted a policy of requiring that, absent extraordinary circumstances, any request for amicus participation must be received by the Department 30 days prior to the date that any brief or petition is due in court.

The Solicitor General and I appreciate your assistance. We recognize that compliance with these time schedules requires

significant modifications in the way the Civil Division and your office have handled matters in the past. I and my staff stand ready to discuss these matters and to assist you in any way you suggest.

Sincerely,

RICHARD K. WILLARD
Assistant Attorney General
Civil Division

February 3, 1986

Ms. Holland:

Attached please find a copy of the letter which you requested. If I can be of any further assistance, please do not hesitate to call me.

Sincerely,

Carolyn Brammer

Carolyn Brammer
Executive Assistant
to the
Solicitor General

Attachment

U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

November 26, 1985

Dear Mr. _____:

I have had indications from the Supreme Court of the Court's desire to reduce the delays in their processes occasioned by extensions sought by the Government. I am determined to comply fully and promptly. This means that all recommendations and drafts in Supreme Court cases must come to our Office according to rigorous schedules, and that in turn means that communications from you to us or to the Divisions must comply with such schedules. Extensions will henceforth be rarely granted.

This Office must also approve appeals, petitions for rehearing en banc, and recommendations for amicus participation. In order for us to perform this function (with a staff of some 20 lawyers) and so that those tasks do not interfere with our Supreme Court work, these matters must come to our Office in an orderly and timely manner as well. A schedule of deadlines has been established with the Divisions. Your cooperation with us and the Divisions is essential in order for this Office to take your views into account in our final decision.

I stand ready to discuss these matters and to assist you in any way you suggest.

Yours,

/s/ Charles Fried

Charles Fried
Solicitor General